

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 05-0331P**

Withholding Tax

For the Periods January 2004 Through November 2004

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1; IC 6-3-4-8; 45 IAC 15-11-2

The taxpayer protests the penalties assessed for failure to timely file 11 withholding tax returns by their due dates and remit the appropriate tax.

**STATEMENT OF FACTS**

The taxpayer filed its withholding tax returns for the months of January through November 2004 after their due dates. The calculated amount of tax due for these months was remitted in February 2005. Accordingly, the department assessed penalties for the taxpayer's failure to timely remit its tax. In his letter of protest, the taxpayer's manager requested that the penalty be abated due to reasonable cause.

**I. Tax Administration – Penalty**

The returns in question were due 30 days following the end of each month. The taxpayer asserts that it opened for business in January 2004. However, the taxpayer's management personnel did not read the withholding tax information provided by the department until January 2005. Upon becoming aware of its withholding tax responsibility, the taxpayer remitted the appropriate tax. The taxpayer requests that the department reconsider the imposition of penalty because it was a newly-organized business and is struggling to survive. The department does not consider this to be reasonable cause.

IC 6-3-4-8(b) states in relevant part: "An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month." The statute does not provide for any leniency based upon a taxpayer's being recently organized.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer has not established that its failure to timely file the returns in question and pay the appropriate tax was due to reasonable cause and not due to negligence.

### **FINDING**

The taxpayer's protest is denied.